

**Minutes of the
Value Based System Task Force Meeting
Utah State Office Building – Room 4112
August 10, 2000
12:00 p.m.**

ATTENDANCE

Joe Jenkins	Utah State Building Board
David Adams	Utah State Building Board
Dale Brinkerhoff	Southern Utah University
Dennis Geary	College of Eastern Utah
Dan Kohler	Daniel Kohler Architects
Ken Adlam	AIA of Utah
Tim Thomas	AIA of Utah
Elizabeth Mitchell	AIA of Utah
Barry Smith	AIA of Utah
Alan Bachman	Attorney Generals Office - DFCM
Al Peterson	Association of General Contractors
Gary Smith	Association of General Contractors
Jim Oberndorfer	ABC/Union Pointe Construction
Jim Smith	URCA/Heritage
Jim Paull	Sheet Metal Contractors
Lonnie Bullard	Jacobsen Construction
Marv Allen	Hansen, Allen & Luce
Lynn Hinrichs	Division of Facilities Construction and Management
Matthias Mueller	Division of Facilities Construction and Management
Richard E. Byfield	Division of Facilities Construction and Management
Shannon Lofgreen	Division of Facilities Construction and Management
Teena Scholte	Division of Facilities Construction and Management
Robert Woodhead	Division of Facilities Construction and Management
Ken Nye	Division of Facilities Construction and Management

Chairman Jenkins convened the task force meeting at 12:42 PM.

Mr. Byfield mentioned changes made to the draft document would be posted to the DFCM Internet site.

Chairman Jenkins stated the duties of the task force were nearing completion. As the process wrapped-up, the Building Board would begin the process of writing the recommendation into a rule. A few projects are forthcoming and may be awarded using the recommended process, even before a rule is in place. This will allow the Building Board to resolve any unforeseen problems that might emerge. It is the intent of DFCM to bid all projects according to this process.

Ken Adlam introduced himself as a representative of the American Institute of Architects (AIA) and stated he believed the selection of architects and engineers (A/E's) would follow a similar format to the selection of contractors, with some differences. Chairman Jenkins confirmed the task force would take the time to define the differences. Marv Allen of the Consulting Engineers' Council of Utah (CECU) confirmed Chairman Jenkins' desire and noted the engineers, as well as the architects, should be available to discuss the differences in the A/E selection process.

Chairman Jenkins referred the task force to page two of the proposed procurement process and mentioned he has avoided devoting much of the proceedings to a name for the process. He wished to leave the aspect alone for the present time, feeling the proceedings should be better spent than in debating a name. He liked the term 'Utah's Value-Based Procurement *value* should be in place.

Chairman Jenkins referred the task force to the objective proposals on page three. He stated the six main objectives, stressing the procurement process as a win-win for all parties involved. If the win-win aspect fails, then the process fails, and a discussion will be held to determine the reason.

Page four delineated the advertisement process. The task force stressed the need to do the projects under the procurement process, and to identify as such in the advertising.

The education meeting will not be required as had been indicated on page five, and will be held by DFCM sponsors only to keep participants up-to-date with the procurement process. The meetings will allow exposure to firms new to the process, and identify changes that may impact firms familiar with the project. Richard Byfield commented the meeting would strictly focus on process and allow participants to learn the vocabulary of the process. It will be held in prior to the registry meeting to accommodate those traveling long distances. He offered an infinite amount of time to help firms understand the process. Chairman Jenkins commented the education meeting would not be included in the rule.

Chairman Jenkins mentioned the task force has come to an agreement on the registry meeting and the philosophy is that the onus of the project will be on the general contractor or the engineer or architect. The general contractors will be evaluated and hold responsibility for their subcontractors. The registry meeting will be for the general contractors or A/E's, if the process is to select their services. Attendance of subcontractors is not required, although they are invited. Part of the registry meeting will concern a discussion identifying those areas pertaining to specific subcontracting trades.

Dan Kohler requested clarification on if the A/E is the prime A/E and if engineers needed to be present when an architect is selected. Chairman Jenkins responded that if the sole purpose is to select an architect or engineer, the registry meeting would be designed to facilitate their selection.

Mr. Byfield stated the task force agreed the general contractors would be responsible for delivery. It was proposed to identify critical subcontractors in order to identify issues needing to be addressed in the management plan because of the nature of a specific project. Mr. Byfield reiterated not attending the registry meeting would preclude a general contractor (or an A/E if they are being selected) from submitting a bid on the project.

Chairman Jenkins stated that, among the purposes of the registry meeting was to allow DFCM to set out their dream for the project. DFCM would outline the particulars of their vision and identify one to five project-specific questions to the reference list.

Page seven indicated the contractor and/or A/E will submit at least ten references each for the firm and for the person-in-charge for the project, although the references may be the same for each. DFCM will individually contact 3-5 references randomly, asking them the ten questions on the reference sheet, plus any additional questions added at the registry meeting. Chairman Jenkins stated he would like to try to require ten references, but acknowledged less than ten references may be required for new firms lacking the history.

Chairman Jenkins stated the contractors and A/E's would then submit a sealed cost proposal in conjunction with the management plan. Mr. Byfield clarified there was to be a submittal for general contractors on the sealed proposal with the subcontractor list. They would remain sealed until the management plans were received in order to remain reflective of the sealed cost proposal. Chairman Jenkins affirmed the management plan and the sealed cost proposal do not have to be submitted together.

Al Peterson of the Associated General Contractors of Utah (AGC) mentioned some of the contractors have expressed a desire to know their ranking in the scoring process to allow the option to withdraw from the running and avoid spending more money on the bid. Mr. Byfield replied the task force had not decided if there was a minimum score required in order to proceed. Mr. Byfield stated DFCM did not wish to disclose all of the information on the references and preferred to be in a situation where there was a generic threshold and scores need to be high enough to recommend proceeding. Al Peterson felt dealing with the issue of determining a minimum score would address the contractors' concerns of cost.

Chairman Jenkins stated the task force would be asked to discuss the issue of the evaluation of past performance on State projects. If some of those evaluations come in with low scores, then perhaps DFCM should alert the contractor they probably would not get the project based on their past performance, but allowing them the option of bidding the project anyway.

The sealed cost proposal and the management plan will become a part of the successful bidder's contract. Statute requires the sealed cost proposal include everything above \$35,000. Under this approach, especially when a team is being built, the cost proposals allow contractors to know whom they are working with. General contractors should be able to list

their subcontractors in with the sealed proposal.

Gary Smith stated there is not a point in the procedure where DFCM obtains references from subcontractors. Lonnie Ballard stated the AGC has no problem if DFCM required references from critical subcontractors as long as the reference process for subcontractors is the same as it is for the general contractors. Mr. Byfield stated the management plan should address every issue as to why a team has been created, including past experience, and should be more than just a low-price concept. Only primes need to be included in reference material.

Mr. Byfield commented that the management plan is about how a project will be accomplished and how risk will be reduced.

Chairman Jenkins stated that the management plan is a blind format submitted by each of the prime-bidding firms and will be scored by the selection committee. The management plan should specify how each firm will accomplish the project and how the risk will be reduced. The idea is to determine what makes the difference in the ability to deliver the project. The management plan is the method by which a firm demonstrates its skill beyond its competitors. Chairman Jenkins stated management plans would be required of A/E's.

Chairman Jenkins stated the interview process would be led by the management plan. Questions of value and quality will come up in the interview process. To ensure that the process is blind, names will be blacked out of submittal documents. Firms that do not edit their own management plans will not be eliminated from running. Mr. Byfield stated that it is to a firm's advantage to edit their own documents. Chairman Jenkins acknowledged a criticism from the general contractors against the cost of submitting a management plan. DFCM does not want a marketing approach, and the money spent on the management plan should not be significant.

The selection committee will consist of an agency member, a DFCM member, a practitioner, a member of the public, and a member from the Building Board. Chairman Jenkins mentioned there might be difficulty in consistently getting a representative of the Building Board to sit on a selection committee. Chairman Jenkins stressed the importance of the selection committee, in that it takes the process out of DFCM's hands.

Chairman Jenkins acknowledged it would be up to DFCM to make sure that educated, capable people sit on the selection committee and make a fair decision and suggested they should be participants in the two-hour education meeting. Mr. Byfield stated the selection committee should understand why they are reading a management plan, and what happens in the interview process as better decisions are made with more information. The selection committee also needs the appropriate background information and needs to be up to speed on the nature of the project.

Members of the public will be chosen from within DFCM. Mr. Byfield mentioned DFCM

currently has a procedure where they recruit someone from within the professional communities to recommend an individual to them. They actively pursue people with knowledge of the subject. An advantage of having a private practitioner on the committee is that they can convey a message most strongly to the panel on the nature of the project and they have the knowledge of design and construction.

Chairman Jenkins stated that the intent of the selection committee is to remove as much bias as possible.

Dale Brinkerhoff of Southern Utah University expressed his discomfort at having only one agency member on the selection committee. Chairman Jenkins mentioned he toured existing buildings across the state with the Building Board, where he learned of existing issues and proposed projects. Among the criticisms they heard is that the agencies take over the projects, determining everything from scope to the individuals involved, and DFCM loses control. It is the feeling of DFCM that one agency member keeps the process fair. Mr. Brinkerhoff stated if the management plans are blind and are scored independently of each other, that removes the opportunity to block vote.

When the selection committee is ready to deliberate and award a bidder, they begin with the management plan review. The blind management plans will be evaluated, based on their knowledge of the project. The projects will be graded individually on a scoring system of 1-5.

The grades will be submitted back to DFCM along with the management plans. It was emphasized the selection committee would be scoring, not ranking the management plans.

Chairman Jenkins mentioned the next step would be to acquire references and a DFCM employee would call a random sampling of at least three references. Once that process is complete, DFCM will forward the references to the selection committee. The selection committee will blindly grade (not rank) the references and there would be no formula to do the scoring. The references will state the reasons why they gave a particular score. Chairman Jenkins mentioned it would be emphasized to the selection committee that all of the criteria are public knowledge and anyone can view their grades.

Alan Bachman, General Counsel for DFCM, explained that while the scores will be public, the rationales will remain confidential. Mr. Byfield specified that when a score is given, that information is confidential. The selection committee uses the information to score the bidders and those scores will be public. He added that DFCM has always instructed their selection committees that only DFCM should do the de-briefing. DFCM shares the matrix of strengths and weaknesses with firms. He believed DFCM could offer the information without providing information on specific ratings.

Chairman Jenkins stated the bidders will undergo an interview process where their management plan will be reviewed. The bidders will respond to questions of the selection committee, which will make their grade of 1 – 5. The firm is present, defending their management plan. The second interview is concerned with the management team, including

the subcontractors. The management team interview will not be as intensive as the management plan interview. Mr. Byfield specified the project leader present at the management team interview should have final authority at the project.

Mr. Peterson commented that if the plans are to be executed by more than one individual, all of those individuals responsible for the plan's execution should be present. He believed it often takes more than one individual to run a project. Mr. Byfield replied DFCM is looking for the individual who makes the critical, financial-related decisions on the project. He felt that is one responsible individual, as committees do not make leadership decisions. Chairman Jenkins commented more than one person could come in on the management plan interview as that purpose of the interview is to present the management plan, and not the team. If there is a question concerning a specific engineering issue, a secondary person could answer it. The person accountable for the project must lead the discussion. If he cannot answer most of the questions himself, the selection committee will be aware of it. During the management team interview, the selection committee will learn how a bidder intends to operate as a team.

Craig Peterson offered there should be a period of time for the committee to make their decision. They should have criteria or scope of questions appropriate to ask. He is concerned certain individuals will be unfairly excluded because of an inability to answer technical questions. Chairman Jenkins cautioned against inviting an individual who will answer questions relating to the management plan but who would not participate in the project as the interviews would be back-to-back. Mr. Byfield believed the process would be undermined if a large group of people were speaking.

Mr. Peterson commented that perhaps the entire team responsible for the project should be present at the management teams meeting. Mr. Byfield replied that, in past procurements, successful teams had only one accountable person with knowledge of the project. The measurable differences in the two interviews, allowed by the presence of a team leader in the management plan interview, allowed for a determination of strength.

Mr. Brinkerhoff stated he believed 50% of the management plan is related to the individual presenting it. Mr. Peterson contested not inviting critical subcontractors to help answer questions and acknowledge critical selling points, hinders the availability of all information. He felt competent participants should not be excluded from the interview process. Chairman Jenkins stated the process ought to be left open and bidders should seek contribution their source of choice. Nevertheless, the one person in charge, who must defend the management plan, must lead the interview.

Chairman Jenkins proposed the management plan interview and the project leader interview is of equal lengths of time. It is stated that DFCM should retain the right to contact an individual responsible for a particular project and hold them accountable. Those who are in charge of a project should have a good concept of the big picture, insofar as they can outline it to their client. The details can be left to specialists, but the person in charge should be

accountable for the project. Dan Kohler affirmed the interview should be set up as proposed and the team leader should have a demonstrable knowledge base.

Mr. Adlam asked how the management plan and verbal declarations in the interview were binding to the signed contract. Mr. Byfield mentioned the management plan and the recorded interview would be attached to the contract so there would be no ambiguity on commitments made and that message would be made clear in the registry meeting.

David Adams asked about contractors who have had no prior experience. Chairman Jenkins mentioned the process for them is not applicable. A firm without specific past experience is still eligible. As far as rating past performance, once a project is closed out, all participants will be scored, including DFCM.

Mr. Allen mentioned he failed to see where a firm demonstrates they have done projects similar to the one that they are bidding for in the process. Chairman Jenkins replied that this process may simply eliminate the firm. Mr. Byfield mentioned if a firm was present at the registry meeting and supplied the pertinent references, and they addressed all the important issues in the management plan, then a firm has demonstrated its relevancy. The only additional piece of information is if the firm performed well on a past project. He believed results might be different if firms knew their results will be measured. Mr. Byfield stated he is willing to provide any firm with the information they need to be a competitive bidder on a project.

Jim Paull commented the performance at the end of a project should provide the opportunity to review at subcontractors or critical subcontractors. He stated if a general contractor has a large number of subcontractors on a project, one of who causes a problem in the project, DFCM should have some way of referencing that for the future. Chairman Jenkins encouraged that the onus be placed on the general contractors, rather than DFCM. Mr. Bachman commented the incentive to get better subcontractors is increased, as the process is no longer price-driven. Chairman Jenkins added DFCM did not want to evaluate all the subcontractors in the State of Utah.

Mr. Byfield stated DFCM is trying to get the price of a project related to its value. He acknowledged a strong belief in Dr. Kashiwagi's philosophy. DFCM is pursuing a win-win situation and are not seeking to saddle bidders with a loss. The statute permits contractors to approach DFCM to request a switch of subcontractors, but DFCM does not want to take the liability of deciding which subcontractors can or cannot participate.

Chairman Jenkins mentioned the selection committee makes evaluations without input. At this point, the A/E will enter into a negotiated cost scenario and the contractors would undergo a different set of criteria. Mr. Ballard stated Chairman Jenkins' statement assumes an A/E has fully designed the project. Mr. Byfield specified that, going to design/build, the criteria will be in place, as well as price. These are the criteria for a pure-design selection.

Chairman Jenkins stated the selection committee would then open the sealed envelopes and list the price for each bidder. Amongst them, they evaluate where each firm stands on the five criteria, and then evaluate the price. As a committee, they select the firm and make the recommendation to the DFCM Director to award the project to a firm. He proposed the selection committee should not weigh any of the separate criteria. Chairman Jenkins reiterated the object is to remove bias and the low-bid environment. When a percentage is placed on price, it becomes a determining factor, which is what DFCM does not want but agrees it should be a factor. The criteria should be made public.

Mr. Peterson stated that, given the mix of the representatives on the selection committee, they may have no or limited knowledge of the process. To let them go through the process without interaction could be problematic. It can be resolved if, before the management plans are distributed, the selection committee could discuss the salient issues for the project. Chairman Jenkins proposed sending out a letter with that information in it. Mr. Brinkerhoff stated that, speaking for Higher Education, there should be two members on the selection committee. A proposal was made for the selection committee to attend a registry meeting. The issue of finding a person at-large has not been solved, and that representative may be an agency member. He cautioned against mandating two agency-members be present on a selection committee.

Mr. Smith expressed a concern about mingling the selection committee with the mandatory registration meeting thinking it would bring the committee too close to the problems with PBPS. Chairman Jenkins replied that group dynamics are such that one would discuss the entire process before the selection is made. It is commented that having someone present without pertinent project knowledge on the committee is not necessarily negative. Chairman Jenkins reiterated that, regardless of his knowledge of a project, the information of an at-large participant can be helpful. There is a concern the selection committee might be lobbied at the registry meeting.

Mr. Byfield mentioned that, on the selection committee, debate will take place when the prices are different and the scores are similar. The selection committee will have to discuss value. The person in charge, the management plan, or the price may become deciding factors in a situation like this. In this situation, there is no mathematical bias, so that price and performance are the best ways of being awarded a bid. It was commented that the contracting community had an issue with replacing judgment with a mathematical formula and they are pleased to see human judgment return to the selection process. Mr. Byfield cautioned that he would need support if it is decided that judgment will be in the selection process. If the process of judgment is not defended against legislative inquiry, then DFCM may have to return to low-bid.

Chairman Jenkins stated the selection committee would then forward the recommendation to the DFCM Director. DFCM would select that firm unless an issue comes up that is material to the process and the selection process would have to be repeated. Such a situation might

occur if fraud took place, or if the selection simply did not meet the needs of an agency. Even with the black box, subjectivity cannot be removed from the selection process.

Task Force Process for the Future

Chairman Jenkins mentioned there is an accord on the policies discussed. The next step is to use this process in the selection of a DFCM project. The goal is to implement a rule by the end of the year with the hope it remains in place for an extended period of time. Part of the rule-making process involves a public hearing, a 30-day wait, and a final public hearing before the rule can be put in place. Mr. Lynn Hinrichs of DFCM offered to try the selection process on two projects that he will bid in September.

Chairman Jenkins mentioned the task force is aware of the potential expense of participating in a bid. He felt a threshold could be established in the future.

Ms. Mitchell stated the committee had done its best job to anticipate all circumstances. She anticipated further modification, simplification, and adaptation of the process as it goes along. Mr. Bachman commented many of the aspects of the proposed selection process have been in place, and none of what is proposed is a revolutionary change in A/E selection.

Jim Oberndorfer of Union Pointe Construction requested DFCM consider an advertising process to inform contractors and A/E's of the new procedure. Chairman Jenkins mentioned he would like to send the proposal to members of the A/E and contracting community. The process of making a rule is a public, published process that will be initiated by the Utah State Building Board. Chairman Jenkins commented the proposal will be condensed in a more articulated way. He commented the rule will be issued, giving all interested parties a period of time to respond. Mr. Bachman commented that drafts may be issued to the associations for their commentary.

It was suggested that the task force name the procurement technique "Value-Based Procurement." Chairman Jenkins asked about ways to delineate this process from the other procurement processes that take place in the State of Utah. Mr. Byfield mentioned the policy is under the 'Request for Proposals' statute. DFCM would prefer the term 'selection' to 'procurement.' It was finally agreed to call the process 'Value-Based Selection.'

Mr. Adams mentioned a need to expand the Building Board. The amount of work that the Building Board will be involved in is much higher than it has been in the past. The Building Board appreciates the work of the Task Force. He appreciated the input of the professional and contracting communities. Mr. Adams complimented Chairman Jenkins for his participation as chairman of the task force, citing him for adequate representation of the Building Board. He stated the work of the task force has set the foundation for an improved procurement process, which will require constant review.

The meeting adjourned at 2:45 PM.